

BEFORE**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Petition of Sprint
Communications Company L.P. for Arbit-
ration of Interconnection Rates, Terms,
and Conditions and Related Arrangements
with Ameritech Ohio.)
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)
)

Case No. 96-1011-TP-ARB**ARBITRATION AWARD
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96-1011-TP-ARB

-8-

resale. Sprint also claims that Ameritech must make its promotional offers available to Sprint because Section 251(b)(1) of the Act requires LECs to make all telecommunications services available for resale without unreasonable or discriminatory conditions or limitations. Sprint states that Ameritech's reliance on Sections 47 C.F.R. §51.613(1)(2) is misplaced. Sprint agrees that the section provides that promotional offers of less than 90 days are not subject to resale at the wholesale rate. However, Sprint believes that Ameritech, pursuant to the Act, must still make such offers available for resale. Without the ability to resell promotional offers, Sprint claims that it will be at a competitive disadvantage. Ameritech will be able to attract new customers with promotional offers. On the other hand, new entrants into the market, so claims Sprint, will not be able to do so without experiencing a loss.

Ameritech disagrees with Sprint's interpretation of 47 C.F.R. §51.613. Ameritech states that 47 C.F.R. §51.613(b) expressly provides for reasonable, nondiscriminatory restrictions on resale by incumbent LECs. Sprint's proposal, Ameritech alleges, would eliminate Ameritech's ability to impose permissible restrictions.

As for promotional offerings, Ameritech contends that its proposed contract terms mirror the FCC's rules, excluding from resale only those promotional offerings that fall within the FCC's definition of promotional offerings not subject to resale. Sprint's proposed language, Ameritech asserts, conflicts with the FCC's rules. Sprint's proposal would mean that it would never have to purchase retail services at a price greater than that offered to Ameritech's retail customers. Rule 47 C.F.R. §51.613(a)(2), according to Ameritech, allows for promotional rates that are lower than what a resale purchaser would pay, even after the wholesale discount is applied. Pointing to the FCC Order at ¶949-950, Ameritech declares that short-term (90 days or less) promotional prices do not constitute retail rates and need not be offered at a discount to resellers. Ameritech deduces that the FCC effectively excluded short-term promotions from any sort of resale obligation. Ameritech further points out that the Commission underscored the FCC provision in Finding 41 of its Entry on Rehearing in Case No. 95-845-TP-COI. Specifically, Ameritech relies on Guideline IX.B.5 as dispositive of the issue in Ameritech's favor, pointing out further that Sprint's witness conceded as much.

Arbitration Award: The panel's recommendation shall be adopted. Sprint's argument that short-term promotional offers are "telecommunications services" subject to resale is contrary to Guideline IX.B.5. and 47 C.F.R. §51.613. The FCC Order at ¶949-950 states that short-term promotional prices do not constitute retail rates for the underlying service and, thus, are not subject to the wholesale rate obligation.

Sprint's request that such promotions must nevertheless be made available for resale at the same rate as those services offered to Ameritech's end users puts Sprint in the category of an end user, which is inconsistent with Sprint's assertion that it is a telecommunications reseller. More telling is Sprint's recognition that the local competition guidelines do not allow short-term promotional discounts to be made available for resale.



Public Service Commission of Wisconsin

Cheryl L. Parrino, Chairman
Daniel J. Eastman, Commissioner
Joseph P. Mettner, Commissioner

Jacqueline K. Reynolds, Executive Assistant
Lynda L. Dorr, Secretary to the Commission
Steven M. Schur, Chief Counsel

Mr. Peter L. Gardon
Reinhart, Boerner, Van Deuren,
Norris and Rieselbach
7617 Mineral Point Road
Madison, WI 53717

Ms. Lisa S. Keyes
Boardman, Suhr, Curry and Field
1 South Pinckney Street, Suite 700
Madison, WI 53703

Re: Petition of Sprint Communications Company for Arbitration per
ss. 252(b) of the Telecommunications Act of 1996 to Establish an
Interconnection Agreement with Wisconsin Bell, Inc. (d/b/a Ameritech
Wisconsin)

Dear Mr. Gardon and Ms. Keyes:

Enclosed is the award of the arbitration panel.

As you see in the implementation section of the award, the parties have until January 31, 1997, to produce joint contract language based on the award and return one joint agreement to the panel. The agreement should indicate which provisions resulted from the arbitration award as opposed to those negotiated by the parties.

After a short period of staff review, the panel will then circulate the agreement to the standing notice list for comment and submit the award, agreement, and comments to the Commission for approval, and the 30 days allotted for the approval process will start to run. As we have agreed, all of those documents will be public.

For the Panel.

Signed this 15th day of January, 1997.

Ann Pfeifer
Chair, Arbitration Panel

APg:\arbitration\ccr\in\awd
Enclosure

cc: Mr. Myron L. Cauble
Ms. Julie Thomas Bowles

610 North Whitney Way, P.O. Box 7854, Madison, WI 53707-7854
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**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Petition of Sprint Communications Company for
Arbitration per § 252(b) of the Telecommunications Act
of 1996 to Establish an Interconnection Agreement with
Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)

6055-MA-100
6720-MA-105

DECISION OF THE ARBITRATION PANEL

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Dockets 6055-MA-100 and 6720-MA-105

The FCC concluded in the First Report and Order that "Section 251(c)(4) does not require incumbent local exchange carriers to make services available for resale at wholesale rates to parties who are not 'telecommunications carriers' or who are purchasing service for their own use." (First Report and Order, ¶ 875 [emphasis added]) Paragraph 874 reinforces this conclusion: "[S]ection 251(c)(4) does not entitle subscribers to obtain services at wholesale rates for their own use." (First Report and Order, ¶ 874)

After reading the appropriate sections of the First Report and Order, the Panel is of the opinion that federal law clearly provides guidance that the 1996 Act did not require the ILEC to provide services to other carriers at wholesale rates for their own internal use. This does not mean that Sprint will not have access to the telephone lines it needs to establish its business, but simply that it must purchase them at retail rates, like every other competitive local exchange carrier and end user.

Sub-Issue B: Promotional discounts available at retail promotional rates from date of offer. (Contract section: § A 10.5.3)

Parties' Positions: Sprint contends that Ameritech should be required to sell to Sprint, at promotional retail rates, promotions of less than 90 days so that Sprint can resell those promotions to its own end users. Sprint contends that neither the 1996 Act nor the First Report and Order state that Ameritech is not required to offer short-term promotions for resale at the same rate offered to other end user customers. Sprint argues that if they are not able to obtain short-term promotions at the same rate as Ameritech offers to its own end users, they will not be competitive with Ameritech. Conversely, Ameritech argues that Sprint's proposal is inconsistent with the 1996 Act and the First Report and Order, and discourages promotions.

Arbitration Panel's Decision: The Panel rejects Sprint's proposed language at § A 10.5.3 of the Contract. Sprint's desire to purchase any retail service at the lower of the wholesale discount rate or promotional rate is contrary to Ameritech's resale obligations. Under its proposal, Sprint, the reseller, would be allowed to purchase services at promotional rates designed for end users, including short-term promotions (those lasting less than 90 days). Short-term promotions are not part of Ameritech's resale obligations, under either

§§ 251(c)(4) or 251(b)(1). Section 51.613(a)(2) clearly allows ILECs to offer short-term promotional rates that are lower than the rates a resale purchaser would pay, even after the wholesale discount is applied to the ordinary retail rate. In addition, ¶ 950 of the First Report and Order specifies that "short-term promotions" need not be offered at a discounted (i.e., wholesale) rate. The Panel, therefore, finds that short-term promotions need not be offered to Sprint.

Although the Panel finds that Ameritech need not sell its short-term promotions to Sprint, Ameritech is still required to sell to Sprint the telecommunications services that are the subject of these short-term promotions at wholesale rates. Sprint can then design its own promotions for these telecommunications services. The Panel finds this to be in the public interest since competition will more likely be encouraged because Sprint will need to develop its own promotions to compete with Ameritech. To rule otherwise would discourage Ameritech from offering such promotions.

Issue IV: Branding

Sub-Issue A: Unbranding of operator services and directory assistance.
(Contract section: § 10.10.1)

Parties' Positions: Sprint proposes that where Ameritech can demonstrate that it is not technically feasible to rebrand operator services (OS) and directory assistance (DA), Ameritech should unbrand OS and DA for all competitors, including Ameritech. Otherwise, Sprint contends that its only option would be to sell its customers OS and DA with the Ameritech brand name, which would harm Sprint's ability to compete. Ameritech counters, stating that Sprint's proposal has no basis in the 1996 Act or the First Report and Order.

Arbitration Panel's Decision: The Panel rejects Sprint's proposed language at § 10.10.1 of the Contract, and adopts Ameritech's at the same section. There is no question whether Ameritech Wisconsin should generally rebrand OS/DA services for Sprint; § 10.10.1 requires Ameritech to do so unless the Commission in the future approves a restriction proposed by Ameritech based on evidence presented by Ameritech at that time. Also, there is no technical feasibility issue here; § 10.10.1 unambiguously contemplates that there might

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the Matter of the complaint of BROOKS)
FIBER COMMUNICATIONS OF MICHIGAN,)
INC. Against AMERITECH CORPORATION)
and MICHIGAN BELL TELEPHONE CO.,)
d/b/a AMERITECH MICHIGAN, regarding)
discriminatory practices as it relates to the)
termination of IntraLATA toll traffic)

Case No. U-11350

BUTZEL LONG, ATTORNEYS & COUNSELORS, A PROFESSIONAL CORPORATION

MOTION TO WITHDRAW COMPLAINT

Respectfully submitted,

BROOKS FIBER COMMUNICATIONS, INC.
Todd Stein (P44159)
2865 Oak Industrial Drive, N.E.
Grand Rapids, MI 49506
(616)224-4300

BUTZEL LONG
William R. Ralls (P19203)
Leland R. Rosier (P33827)
118 W. Ottawa Street
Lansing, MI 48933
(517)372-8622

Attorneys for Complainant

Date: May 9, 1997

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the Matter of the complaint of BROOKS)
FIBER COMMUNICATIONS OF MICHIGAN,)
INC. Against AMERITECH CORPORATION)
and MICHIGAN BELL TELEPHONE CO.,)
d/b/a AMERITECH MICHIGAN, regarding)
discriminatory practices as it relates to the)
termination of IntraLATA toll traffic)

Case No. U-11350

MOTION TO WITHDRAW COMPLAINT

Now comes Brooks Fiber Communications, Inc. ("Brooks"), through its attorneys, and moves to withdraw its complaint in the above referenced matter:

1. On March 21, 1997, Complainant, Brooks, filed its complaint against Ameritech alleging discriminatory practices as it relates to the termination of IntraLATA toll traffic.

2. Brooks and Ameritech have agreed to the arrangements as outlined in the attached letter agreement dated May 7, 1997.

3. Complainant, Brooks, now desires to withdraw the Complaint without prejudice.

WHEREFORE, Complainant requests that the Commission grant its motion,

BUTZEL LONG, ATTORNEYS & COUNSELORS, A PROFESSIONAL CORPORATION

and enter an order dismissing the complaint without prejudice.

— Respectfully submitted,

BUTZEL LONG

By: William R. Ralls

William R. Ralls (P19203)
Leland R. Rosier (P33827)
118 W. Ottawa Street
Lansing, MI 48933
(517)372-6622

Todd Stein (P44159)
Brooks Fiber Communications
2855 Oak Industrial Drive, N.E.
Grand Rapids, MI 49506
(616)224-4300

Attorneys for Complainant

Date: May 9, 1997

BUTZEL LONG, ATTORNEYS & COUNSELORS, A PROFESSIONAL CORPORATION



444 Michigan Avenue
Room 1750
Detroit, MI 48226
Office: 313-223-8033
Fax: 313-498-9325

Craig A. Anderson
Counsel

May 7, 1997

Mr. Todd J. Stein
Brooks Fiber Communications
2855 Oak Industrial Drive, NE
Grand Rapids, MI, 49506

Re: **MPSC Case No. U-11350.**

Dear Todd:

I am writing to confirm our discussions regarding Ameritech's commitment to Brooks Fiber and to customers of Ameritech's intraLATA toll optional calling plans to be able to provide intraLATA toll service to these customers if they select Brooks Fiber as their local exchange service provider. Based on previous discussions between our companies, it has been determined that the arrangements described below would be the most effective from both parties' perspective.

Ameritech or its designated carrier will receive the intraLATA toll calls originating from Brooks Fiber's end user customers via a dedicated facility provided by Ameritech or its designated carrier. Brooks Fiber will route the appropriate traffic to this facility. Ameritech or its designated billing agent will bill the end user for their intraLATA toll service. Brooks Fiber will provide Ameritech with the necessary Bellcore standard customer care information.

Based on our analysis, we anticipate, with your cooperation, that this solution will be in place within sixty (60) days, as Ted Edwards has discussed previously with Larry Vander Veen. Our target date is June 13, 1997. In light of our commitment to work toward implementing this solution, we request that Brooks Fiber dismiss the above-referenced pending MPSC complaint without prejudice.

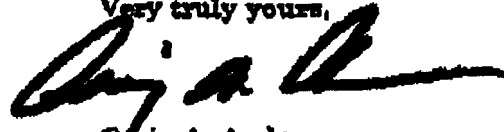
Mr. Todd J. Stein

May 7, 1997

Page 2

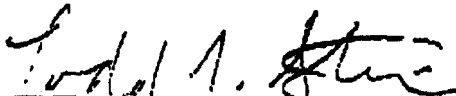
If this arrangement is acceptable, would you please countersign and return a copy of this letter where indicated below? I understand you will make arrangements to seek dismissal of the complaint. Thank you for your cooperation.

Very truly yours,



Craig A. Anderson

CAA:jkt



Todd J. Stein

444 Michigan Avenue
Room 1750
Detroit, MI 48226
Office: 313-223-8033
Fax: 313-496-9326

Craig A. Anderson
Counsel



May 29, 1997

Mr. Todd J. Stein
Brooks Fiber Communications
2855 Oak Industrial Drive. NE
Grand Rapids, MI, 49506

Re: MPSC Case No. U-11350.

Dear Todd:

I am writing to confirm our discussions regarding Ameritech's commitment to Brooks Fiber and to customers of Ameritech's intraLATA toll optional calling plans to be able to provide intraLATA toll service to these customers if they select Brooks Fiber as their local exchange service provider. Based on previous discussions between our companies, it has been determined that the arrangements described below would be the most effective from both parties' perspective.

Ameritech will handle the intraLATA toll calls originating from Brooks Fiber's end user customers. Ameritech will bill the end user for their intraLATA toll service. Brooks Fiber will provide Ameritech with the necessary Bellcore standard customer care information.

Based on our analysis, we anticipate, with your cooperation, that this solution will be in place within sixty (60) days, as Ted Edwards has discussed previously with Larry Vander Veen. Our target date is June 13, 1997. In light of our commitment to work toward implementing this solution, we request that Brooks Fiber dismiss the above-referenced pending MPSC complaint without prejudice.

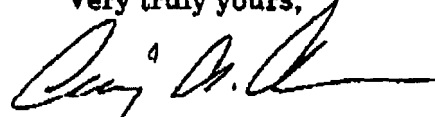
Ameritech will also make a similar arrangement available to MCI based upon MCI's request. Ameritech will put arrangements with MCI in place as soon as possible based on discussions with MCI, and will attempt to put such arrangements in place within 90 days of June 13, 1997.

Ameritech and Brooks Fiber also agree that the agreement described herein is based upon the specific facts of the complaint filed by Brooks Fiber herein and shall have no precedential value in any future proceeding before the Commission.

Mr. Todd J. Stein
May 29, 1997
Page 2

If this arrangement is acceptable, would you please countersign and return a copy of this letter where indicated below? I understand you will make arrangements to seek dismissal of the complaint. Thank you for your cooperation.

Very truly yours,



Craig A. Anderson

CAA:jkt



Todd J. Stein

07-02-97 01:47PM FROM MICH. BELL LAW DEPT. TO 913127017711

P012/017

17# 200d 7487:10 26-11-90

0800 898 018

X46-2

DRAFT

OK'd - 6/11, sent

June 11, 1997

Mr. Larry Vander Veen
Regional Vice President - Great Lakes Region
Brooks Fiber Communications
2855 Oak Industrial Dr. NE
Grand Rapids, Michigan 49506

VIA FAX: 616-224-3200

Dear Larry,

I am writing to let you know that arrangements are now in place to provide IntralATA toll service for Ameritech's optional calling plan customers who select Brooks Fiber as their local exchange provider. As previously agreed to, Ameritech's designated carrier will receive the IntralATA toll calls originating from Brooks Fiber's end user customers via a dedicated facility provided by Ameritech or its designated carrier. Brooks Fiber will route the appropriate traffic to this facility. Ameritech or its designated billing agent will bill the end user for their IntralATA toll service. Brooks Fiber will provide Ameritech with the necessary customer care information.

I would like to take this opportunity to extend our thanks to your company for their help with this project. The cooperation and input of your staff has been instrumental in meeting our June 13, 1997, target date for implementation. In particular, Jason DeJongh has been extremely responsive in working with us to see that the network was turned-up in the very short time frame that we had allowed ourselves. He and his staff have also provided valuable insight to insure that the service order process has been fine tuned.

Thank you again for your help, and please don't hesitate to call if I can be of further assistance on this or any other issue of concern.

Sincerely,